



**American National  
Standards Institute**

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February 24, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

RE: CC Docket  
No. 96-254

RECEIVED  
FEB 24 1997  
Federal Communications Commission  
Office of Secretary

Dear Mr. Caton:

Attached herewith are comments of the American National Standards Institute (ANSI) in reply to the Notice of Proposed Rulemaking in the matter of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Sincerely,

Jane W. Schweiker  
Director, Public Policy and Government Relations

American National Standards Institute  
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**Comments of the American National Standards Institute (ANSI)**

The voluntary standardization system in the United States is the most effective and efficient in the world. For more than 75 years, this system has been administered and coordinated by the private sector through the American National Standards Institute (ANSI), with the cooperation of federal, state and local governments. ANSI does not write standards; it serves as a catalyst for standards development by its diverse membership.<sup>1</sup>

As described in more depth herein, ANSI accredits standards developers and approves standards as American National Standards. ANSI also is the United States representative to the two major, non-treaty international standards organizations: the International Organization for Standardization (ISO) and, through the United States National Committee, the International Electrotechnical Commission (IEC). In this role, ANSI is responsible for representing U.S. interests at the policy level of both organizations as well as for facilitating U.S. participation in the various technical committees which develop international standards. To do the latter, ANSI accredits U.S. Technical Advisory Groups (TAGs) to ISO Technical Committees and appoints the U.S. Technical Advisors to the IEC Technical Committees.

This submission is divided into the following sections:

1. Summary Statement of ANSI's Comments
2. Criteria for "Standards-Setting Entities"
3. ANSI's Accreditation Process
4. ANSI's Standard Developer Audit Program
5. ANSI's Approval of American National Standards
6. The ANSI Appeals Process
7. ANSI's Patent Policy

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<sup>1</sup> This membership consists of approximately 1,300 companies (accounting for sales of approximately \$1.2 trillion), 250 professional, technical, trade, labor, academic and consumer organizations, and some 40 government agencies.

**1. Summary Statement of ANSI's Comments**

ANSI is submitting these comments in response to an announcement by the Federal Communications Commission (FCC) requesting comments on the Notice of Proposed Rulemaking (NPRM) in the matter of implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (CC Docket No. 96-254).

ANSI believes that, if the FCC is seeking qualifications for non-accredited standards developing organizations (NASDOs) in order to ensure that their standards development process is open and consensus-based, then the FCC should hold NASDOs to the same requirements and criteria that accredited standards setting entities must meet. ANSI's accreditation program is well-established, impartial and effective and has a several decade history of government involvement and recognition.

**2. Criteria for Standards-Setting Entities**

ANSI has a well-established standards developer accreditation program that very effectively evaluates and monitors whether an organization's standards developing process is adequately based on consensus and due process principles. As described in more detail below in Section 2 herein, in accrediting a standards developing organization, ANSI determines whether the organization's standards developing process is open, consensus-based and provides for due process. As part of the accreditation review process, ANSI announces for public review and comment that the organization has filed an application for accreditation.

ANSI also provides two mechanisms for an ongoing review of the organizations it accredits. First, ANSI has an appeals mechanism which can be utilized by any materially affected party who has a complaint regarding an accredited organization's standards development process. Second, ANSI has developed and implemented a standards developer audit program, pursuant to which these accredited organizations are

audited on a regular basis in order to determine whether they are in compliance with their accredited procedures and current ANSI requirements.

As noted in the Summary Statement above, ANSI believes that the FCC should hold non-accredited standards developing organizations (NASDOs) to the same requirements and criteria that accredited standards setting entities must meet. ANSI's accreditation program is well-established, impartial and effective and has a several decade history of government involvement and recognition.

If it would be helpful, ANSI is very willing to meet with the FCC to discuss these issues further.

### **3. ANSI's Accreditation Process**

ANSI accredits various organizations to develop American National Standards. These Accredited Standards Developers (ASDs) are primarily national trade, technical, professional, consumer, labor and certification organizations. Thousands of individuals from companies, organizations (such as labor, consumer and industrial groups), academia and government agencies voluntarily participate and contribute their knowledge, talent and efforts to the standards development process.

ASDs typically provide administrative, and in some instances technical, support in the development of industry-related standards. The standards developed by a particular ASD represent the area(s) in which its members or participants have both an interest and technical expertise. All aspects of the development process, including authorizing new work, administering the development process and consensus ballot, and final publication are under the purview of the ASD.

In order to serve as an ASD, an organization must first become accredited. The accreditation process assures the Institute and its constituency that the standards development procedures followed by the prospective ASD are in conformance with

ANSI's due process and consensus requirements. Among other things, the prospective ASD's procedures must provide for the following:

- Openness: Any materially affected and interested party must have the ability to participate. This participation may include voting or observer membership on the consensus body or participation in the public review period.
- Lack of Dominance: The consensus body must not be dominated by any single interest category. Interest categories include: Producer, User, and General Interest. More specific divisions are permitted and include: Regulatory Body, Consumer, Labor, Insurance, Distributor and Retailer, Professional Society, Testing Laboratory, etc.
- Consideration of Views and Objections: During the process of obtaining consensus on a draft standard, ASDs are required to seriously review comments and objections. An attempt must be made to resolve any objections received.
- Appeals Mechanism: All ASDs must have an appeals process by which affected interests who believe they have not been treated in accordance with established procedures can have the matter reviewed by an impartial body.

#### **4. ANSI's Standard Developer Audit Program**

In March of 1995, the ANSI Board of Directors approved a set of audit procedures pursuant to which ANSI will audit each ASD every five years. The purpose of these audits is twofold:

- It is an opportunity for ANSI to review the ASD's standards development process in detail and confirm that the ASD is operating in conformance with its approved procedures and current ANSI requirements.

- It provides a service to the ASD in that the auditors will recommend improvements (1) so that the ASD will be in conformity with current ANSI requirements, (2) to pertinent aspects of the ASD's infrastructure such as its record-keeping process or (3) to otherwise increase the efficiency of the ASD's process.

ANSI began conducting audits in April, 1996, and the program appears to be both effective and generally well-received.

## **5. ANSI's Approval of American National Standards**

ANSI determines whether standards submitted to it by the ASDs meet the necessary criteria to be approved as American National Standards. ANSI's approval of these standards is intended to verify that the principles of openness and due process have been followed and that a consensus of all interested parties has been reached. In addition, ANSI considers any evidence that the proposed American National Standard is contrary to the public interest, contains unfair provisions or is unsuitable for national use. ANSI coordination is intended to assist the voluntary system in ensuring that national standards needs are identified and met with a set of standards that are without conflict or unnecessary duplication in their requirements.

The process by which consensus is achieved varies depending on the individual ASD's specific procedures, the industry involved and any controversy surrounding the subject matter. Typically the ASD demonstrates that consensus has been achieved through the completion of two primary actions. The first action is a formal vote taken of a group that is representative of all affected interests and is not dominated by any one interest (the consensus body). The second is submittal of the draft standard to a public review period. This allows any materially and directly affected interest the opportunity to review the draft and make comments. This public review period consists, at a minimum, of a 60-day announcement in ANSI's *Standards Action* publication. The ASD must respond to any comments or objections it receives as a result of the formal letter ballot or the public review period and it must make an effort to resolve all objections.

When the process has been completed, the ASD provides a formal submittal to ANSI for final approval as an American National Standard. The formal submittal includes a record of the formal consensus vote, all comments received and how the comments were resolved (or what attempts were made to resolve them if they are outstanding). Upon receipt of the formal submittal, a letter ballot is sent to the Board of Standards Review (BSR). Based on the documentation submitted, the BSR is charged with the responsibility of determining whether the standard submitted meets the



requirements of the Institute. While supported by ANSI staff, it is the BSR and not staff who decides whether to give final approval of proposed American National Standards.

American National Standards are kept current and relevant because, under ANSI's *Procedures for the Development and Coordination of American National Standards*, all such standards must be revised, reaffirmed or withdrawn at a minimum of every five years.

## **6. The ANSI Appeals Process**

If there is an objection to an action taken by the Executive Standards Council (such as accrediting or not accrediting an ASD) or the BSR (such as approving or rejecting a standard as an American National Standard), the objector may appeal that action. Typically the appeal is first heard by the responsible body (the ExSC or the BSR). The decision in that appeal may be appealed to the ANSI Appeals Board.

ANSI will not normally hear an appeal of an action or inaction by an ASD until the appeals process provided by the ASD has been completed. In order to be accredited, an ASD must have an appeals process that is accessible to directly and materially affected interests, and incorporates the following due process requirements:

1. appeals must be addressed promptly and a decision made expeditiously,
2. the right of the involved parties to present their cases shall not be denied,
3. appeals procedures shall provide for participation by all parties concerned without imposing an undue burden on them,
4. consideration of appeals shall be fair and unbiased and shall fully address the concerns expressed, and
5. records of appeals shall be kept and made available to the involved parties.

7. **ANSI's Patent Policy**

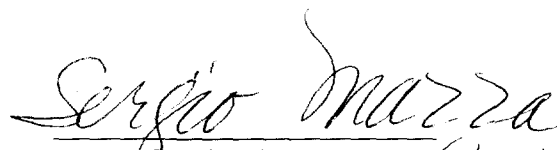
The standards developing organization must comply with the ANSI Patent Policy, which requires a holder of a patent implicated by a proposed standard to agree to license its technology on reasonable and non-discriminatory terms. If the patent holder is not willing to agree to abide by the Patent Policy, then the consensus body must consider its alternatives such as modifying the standard to delete any reference to the patented technology. ANSI's Patent Policy is virtually identical to ISO and IEC's patent policy governing international standards.

Typically antitrust violations occur in connection with standards development activities when a person or entity intentionally and unfairly manipulates the process to gain an unfair competitive advantage. One of the benefits of the ANSI process is that its due process, openness and balance of interests requirements make the process transparent. Any antitrust issue is likely to become very visible and addressed early in the process.

ANSI appreciates having this opportunity to provide comments on the FCC's Notice of Proposed Rulemaking.

Dated: New York, New York  
February 24, 1997

Sincerely,

  
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President and CEO

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